

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MOUNTAINEER CELLULAR GENERAL	)	
PARTNERSHIP FOR THE ISSUANCE OF A CERTIFICATE	)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT	)	95-437
A TOWER	)	

O R D E R

On October 26, 1995, Mountaineer Cellular General Partnership ("Mountaineer Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a cellular radio telecommunications system for Rural Service Area No. 10 ("RSA No. 10"). RSA No. 10 includes Breathitt, Estill, Jackson, Knott, Lee, Letcher, Owsley, Perry, Powell, and Wolfe counties. Mountaineer Cellular has requested authorization to construct a cell site in Jackson County. Mountaineer Cellular was previously granted authority to operate a cellular radio telecommunications system in RSA No. 10 in Case No. 91-002.<sup>1</sup>

The proposed cell site consists of a 180-foot or less guyed antenna tower to be located 0.8 miles south of the intersection of State Routes 30 and 578, near Annville, in Jackson County, Kentucky ("the Annville cell site"). The coordinates for the Annville cell site are North Latitude 37° 18' 29" by West Longitude 83° 57' 37".

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<sup>1</sup> Case No. 91-002, The Application of Mountaineer Cellular General Partnership for the Issuance of Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public and for Establishment of Initial Rates.

Mountaineer Cellular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Annville cell site. Based upon the application, the design of the tower and foundation appears to meet the criteria of the Building Officials and Code Administrators International, Inc. National Building Code with reference to earthquakes, winds, and tornadoes.

Pursuant to KRS 100.324(1), the Annville cell site's construction is exempt from local zoning ordinances; however, Mountaineer Cellular notified the Jackson County Judge/Executive of the pending construction. Mountaineer Cellular has filed applications with the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") seeking approval for the construction and operation of the Annville cell site. Both applications are pending.

Mountaineer Cellular has filed notices verifying that each person who owns property or who resides within 500 feet of the Annville cell site has been notified of the pending construction. The notice solicited any comments and informed the property owners or residents of their right to intervene. In addition, notice was posted in a visible location on the proposed site for at least two weeks after Mountaineer Cellular's application was filed. On November 3, 1995, the Commission received a letter requesting intervention from Ted Kay. On November 10, 1995, the Commission granted Mr. Kay's request and ordered Mountaineer Cellular to respond to Mr. Kay's inquiry. On January 30, 1996, Mr. Kay

requested a hearing involving the Annville site. On February 7, 1996, the Commission issued an Order setting a hearing for March 21, 1996. On February 13, 1996, Mr. Kay advised the Commission that Mountaineer Cellular had resolved his concerns and withdrew his request for a hearing, which the Commission canceled by order on February 15, 1996. To date, no other intervention requests have been received.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Mountaineer Cellular should notify the Commission if it does not use this antenna tower to provide cellular radio telecommunications services in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Mountaineer Cellular.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Mountaineer Cellular should be granted a Certificate of Public Convenience and Necessity to construct and operate the Annville cell site in RSA No. 10 under its previously approved tariff.

IT IS THEREFORE ORDERED that:

1. Mountaineer Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct and operate the Annville cell site.

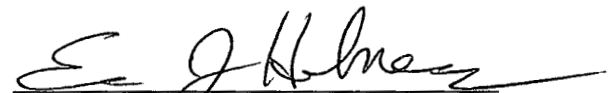
2. Mountaineer Cellular shall file a copy of the final decisions regarding the pending FAA and KAZC applications for this cell site construction within 10 days of receiving these decisions.

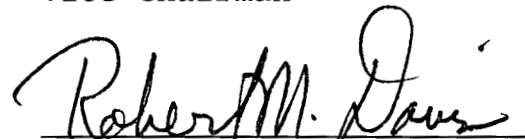
3. Mountaineer Cellular shall immediately notify the Commission in writing, if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 5th day of March, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director